

## Judgement No. 137

*(Original: English)***Case No. 117:**  
**Khederian***Against:* **The Secretary-General  
of the United Nations**

*Requests for revision and interpretation of Judgement No. 120.*

*Request for revision.—Powers of revision of the Tribunal under article 12 of its Statute.—Mandatory nature of this provision.—Absence of any new fact which existed before the judgement was given.—The request is rejected.*

*Request for interpretation.—Conditions under which such a request is receivable.—Absence of any dispute regarding what the Tribunal decided with binding force.—The request for interpretation in this case is an appeal against the Judgement.—The request is rejected.*

*The application is rejected.*

## THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. R. Venkataraman, President; Mr. Zenon Rossides;

Whereas, on 24 October 1969, the Applicant filed with the Tribunal the following application requesting, under Article 12 of the Statute, revision of Judgement No. 120 rendered in her case on 25 October 1968:

“Please take notice that the above named Applicant prays that the decision of the Administrative Tribunal of the United Nations in the above mentioned case granting compensation in the sum of \$7,776.00 on October 25, 1968, be reviewed and said decision be modified upon the following grounds, to wit, that the Applicant has discovered the facts of such nature as to be a decisive factor in the revision of the judgement which facts were unknown to the Tribunal and to the Applicant as follows:

“On October 11, 1969, the Applicant discovered that her right leg had become swollen resulting in extreme pain in her knee and upper leg rendering ordinary locomotion impossible and further discovered an aggravation to the injuries sustained to her neck, right arm and spine, for which she received, and continues to receive, medical treatment all of which conditions are causally related to the injuries sustained by Applicant for which she had applied for compensation under Case No. 117 on September 22, 1967.

“Wherefore, the Applicant respectfully requests that the judgement of the Administrative Tribunal be reviewed under article 12 of the Statute of the Administrative Tribunal of the United Nations and revised in order to fully consider the aforementioned facts.”;

Whereas, on 3 November 1969, the Secretary-General submitted the following comments on the application:

“ . . .

“Judgement No. 120 reflects no evaluation by the Tribunal itself of the Applicant's medical condition and nothing in the judgement implies that any

particular allegation about the Applicant's condition could constitute a 'decisive factor' under article 12 of the Tribunal's Statute. Moreover, although subsequently discovered facts may occasion a revision, there seems to be no basis under article 12 for revising a judgement on the basis of facts or conditions which actually developed only after judgement.";

Whereas, on 27 August 1970, the Applicant submitted the following observations on the Secretary-General's comments:

"...

"... I feel, in the interest of justice, the Tribunal should amend the award and award me compensation based on the degree of permanent injury I suffered in the employ of the United Nations, the medical of which is in the file.

"The award of two years net salary is not sufficient to compensate me for my permanent physical disability and the award should be made under Appendix D to the United Nations Staff Rules.";

Whereas, on 12 October 1970, the Applicant filed the following statement:

"1. Further to the notice dated 24 October 1969, the Applicant requests that the Administrative Tribunal, in addition to reviewing its decision of 25 October 1968 in Judgement No. 120, gives such directions and elaborations of Judgement No. 120 so as to give effect to the judgement. In particular, the Applicant requests that such directions and elaborations determine the following:

"(a) How the injury sustained by the Applicant 'has to be evaluated';

"(b) How the annual compensation referred to in article 11.2 of Appendix D to the Staff Rules and referred to in the penultimate paragraph of Judgement No. 120 shall be calculated.

"2. The Applicant further requests that the Administrative Tribunal itself assess the compensation payable to the Applicant under article 11.2 of Appendix D as is required by article 9 (3) of the Statute of the Tribunal.

"3. In the event of the Tribunal agreeing to review its previous Judgement No. 120 in the light of further medical evidence of deterioration of the Applicant's condition (as requested in the notice by the Applicant to the Tribunal dated 28 [24?] October 1969), then the Applicant would request the Tribunal to assess the compensation under article 11.1 and/or 11.2 of Appendix D in the light of such further evidence of the deterioration of the medical condition of the Applicant as may be provided by the Applicant or may be ordered by the Tribunal.

"4. The Applicant through her counsel requests leave to appear before the Tribunal to elaborate and support this application by oral argument.";

Whereas, on 14 October 1970, the Executive Secretary of the Tribunal informed the Applicant that in the Tribunal's view the circumstances of the case did not warrant the holding of oral proceedings but that the Tribunal was prepared to consider any additional written statement received not later than 19 October 1970;

Whereas, on 16 October 1970, the Applicant filed an additional statement reading in part:

"...

"5. It is the Applicant's contention that this Judgement failed to fix the compensation which should have been payable to the Applicant under article 11.2 (d) of Appendix D as read with article 11.1 (c) of Appendix D.

"6. It is submitted that the provisions of article 9 of the Tribunal Statute are intended to apply to cases of termination and are NOT intended as an alternative to the award of compensation for partial or permanent disability under article 11.2 or 11.1 of Appendix D.

"7. In the circumstances, it is submitted that the Tribunal should have itself assessed the degree of partial disablement on the evidence before it which was contained in the Medical Board's Report dated 1 December 1966. The Applicant had a contractual right to be awarded compensation in terms of article 11.2 of Appendix D as being a part of her terms of conditions of service.

"8. It could not have been expected that article 9 of the Statute of the Tribunal could be utilized as an alternative to the awarding of compensation under articles 11.1 or 11.2 of Appendix D. Such a conclusion would result in absurdity and indeed in substantial injustice, because article 11.1, for example, could entitle an officer to two-thirds of his official pensionable remuneration plus one-third in respect of each unmarried child for the duration of that staff member's total disability. Under no circumstances could that be compensated by the award under article 9 of the Statute of two years' net base salary.

"9. It is submitted that the Tribunal would be entitled to fix the compensation under article 11.1 under its powers contained in article 9 (3) of the Tribunal Statute which must be presumed to give a power in addition to that contained in article 9 (1).

"10. According to the Medical Board's report which was commented upon at length in the Tribunal's Judgement No. 114, dated 23 April 1968, the Applicant suffered on that date an 84 per cent disability of her right upper extremity, 100 per cent disability as a typist. Following this report, one of the medical advisers repeated at the request of the Secretary of the United Nations Board on Compensation Claims that 'Miss Khederian is a 100 per cent disability. Industrially, for her specific United Nations employment, this is still true—100 per cent disability.'

"11. The Applicant has never had her compensation for partial disability determined.

"12. Further, the Applicant now claims that her condition has deteriorated further.

"13. The Applicant, therefore, requests that the Tribunal

"(a) give all such necessary directions to give effect to the intentions of its Judgement No. 120,

"(b) assess the compensation payable to the Applicant under article 11.2 of Appendix D to the Staff Rules,

"(c) direct the Secretary-General to pay all such moneys and compensation to which the Applicant may be entitled under article 11.2 of Appendix D.";

Whereas the facts in the case are set forth in Judgement No. 114;

The Tribunal, having deliberated from 23 to 30 October 1970, now pronounces the following judgement:

I. The Applicant seeks revision of Judgement No. 120 dated 25 October 1968 under article 12 of the Statute of the Tribunal. According to the Statute, the Tribunal may revise a judgement if:

(a) Some fact, unknown to the Tribunal and the party claiming revision at the time the judgement was given, is subsequently discovered,

(b) Such fact is a decisive factor and

(c) The ignorance of such fact is not due to the negligence of the party claiming revision.

The Tribunal's powers of revision are strictly limited by its Statute and cannot be enlarged or abridged by the Tribunal in the exercise of its jurisdiction.

II. The Applicant bases her request for revision on the fact that she discovered on 11 October 1969 that her medical condition had deteriorated and she claims that this new condition is causally related to the injuries for which she had claimed compensation.

The Tribunal notes that assuming that the new situation referred to by the Applicant constitutes a new fact, it is not alleged that this fact existed before 25 October 1968, when the Judgement was given. Consequently, this fact cannot be the basis for a revision of the Judgement under article 12 of the Statute of the Tribunal.

The Tribunal therefore rejects the request for revision.

III. Concerning the Applicant's request that the Tribunal should give directions and elaborations of Judgement No. 120 so as to give effect to the Judgement, the Tribunal observed in Judgement No. 61 (Crawford and others) that a request for interpretation of a judgement was receivable only if its object was to obtain clarification of the meaning and scope of what the Tribunal decided with binding force and not to obtain an answer to questions not so decided, and that in addition it was necessary that there should exist a dispute as to the meaning or scope of the decision.

IV. The Tribunal's decision in Judgement No. 120 appears in paragraphs III and IV. According to article 9, paragraph 1 of its Statute, the Tribunal gave to the Respondent the option, to be exercised within thirty days of the notification of the Judgement, either to reconsider the Applicant's claim in accordance with the provisions of article 17 of Appendix D to the Staff Rules, or to compensate the Applicant for the injury sustained.

The Respondent decided to pay compensation. The amount of this compensation was fixed by the Tribunal at a sum equivalent to two years' net base salary. The Tribunal is informed that this amount has been paid to the Applicant. The Tribunal's decision has therefore been implemented. What was decided with binding force was the amount of compensation, and no difficulty of interpretation arises in ascertaining that amount.

V. The questions raised by the Applicant are related either to issues which had not been submitted previously to the Tribunal, or to the grounds on which the Tribunal's Judgement is based. The Applicant disputes in particular the basis adopted by the Tribunal in determining compensation. The Applicant thus requests the Tribunal to reconsider its decision. In effect the Applicant wants to appeal

against the Judgement and not to obtain an interpretation of what has been decided with binding force. The Tribunal is therefore unable to grant the request for interpretation of Judgement No. 120.

VI. For the foregoing reasons, the application is rejected.

(Signatures)

Suzanne BASTID  
Vice-President, presiding

R. VENKATARAMAN  
President

Zenon ROSSIDES  
Member

Jean HARDY  
Executive Secretary

New York, 30 October 1970

## Judgement No. 138

(Original: English)

Case No. 136:  
Peynado

Against: The Secretary-General  
of the United Nations

*Termination of the employment of a staff member holding a probationary appointment.*

*Request for the rescission of the decision terminating the appointment.—Discretionary power of the Secretary-General to terminate appointments other than permanent or fixed-term appointments.—Conditions for exercising this power.—Distinction between termination arising at the end of the probationary service and termination arising during the period of probation.—Procedure before the Appointment and Promotion Board for providing safeguards for a fair review of the suitability of the probationer for the grant of a permanent appointment.—Where the Board has reached its conclusions in the light of inadequate or erroneous information and the Secretary-General has relied on these conclusions for the termination of the appointment, the fact that there was a review by the Board does not secure that the Secretary-General's decision is valid.—The Board relied on a periodic report which had been contested by the Applicant and regarding which the Respondent had not followed the procedure applicable to such cases.—The recommendation of the Board and the Secretary-General's decision are defective.*

*Misuse by the Respondent of information presented confidentially to the Joint Appeals Board.—Duty of the Tribunal to draw the attention of the Administration to a number of unsatisfactory features of the case.—Recommendation for permanent appointment approved by the Secretary-General then changed to a recommendation for extension of the probationary period.—Refusal by the Respondent to afford the Applicant an opportunity for oral rebuttal.—Retroactive reappraisal of the Applicant's earlier performance.—Insufficient supervision of the Applicant's work during the probationary period.*

*The Respondent not having requested a remand of the case for correction of the procedure prescribed in Administrative Instruction ST/AI/115, the Tribunal decides, on the merits of the case, that the Applicant has been denied the protection afforded by the said Instruction and thereby deprived of a fair and reasonable procedure before termination of his appointment.—Rescinding the decision terminating the Applicant's*